



Alaska 2-Scale (AK-2S) Pretrial Risk Assessment

Frequently Asked Questions

What is a pretrial risk assessment and what is its purpose?

A pretrial risk assessment tool developed with data identifies the statistical likelihood a defendant will fail to appear (FTA) for one or more court appearances, and/or the likelihood a defendant will be arrested for new criminal activity (NCA) during the pretrial period. The tool that Alaska has adopted – the Alaska 2-Scale (AK-2S) – was developed from Alaska data and predicts the likelihood of both FTA and NCA.

The main purpose of using a pretrial risk assessment is to provide objective and standardized information to an initial release decision-maker (usually a judge or magistrate) to help them make the best possible decision.

How do we know the pretrial risk assessment will work?

When an assessment is developed using a jurisdiction's own standardized data (as was the case with the AK-2S), it will demonstrate what is referred to as "predictive validity" retrospectively. In other words, a few years' worth of recent pretrial/booking data are used, and statistical analyses of the data reveal the risk factors that are good questions to include on a pretrial risk assessment because they are predictive of pretrial outcomes (NCA and FTA).

It is important to remember, however, that policies and practices change as time passes, and these changes can impact the predictive validity of the tool. As a result, best practices strongly recommend that jurisdictions should periodically test the tool's validity in order to ensure it remains predictive.

How do you choose which factors to include on a pretrial risk assessment tool?

A pretrial risk assessment tool uses data analysis and research to determine the risk factors that best predict an individual's risk level for FTA or NCA.

When pretrial assessment tools are developed, a couple of steps are critical:

- 1) Developers look for the factors that will be the BEST predictors of risk of pretrial success or failure. There are many factors that may be "okay" predictors of risk for pretrial success or failure. However, to create a tool that has high predictive validity, the MOST predictive factors should be used.

- 2) Developers also look at which factors work the best TOGETHER to create the most predictive risk assessment.
- 3) Finally, developers eliminate factors that are not predictive for all individuals regardless of their race or gender. In other words, if a factor is very predictive for whites but not for Alaska Natives, it was eliminated.

This means that, based on the data available, the COMBINATION of factors on the tool are the ones that lead to the most accurate predictions of risk across all groups. It also means that, generally speaking, adding in “other factors” will only decrease predictive accuracy.

How should pretrial risk assessment be used in the decision-making process?

The result of a risk assessment is an important factor that should be weighed by decision-makers in combination with other statutory requirements, including the type and level of the charge.

For certain types of lower-level, non-violent charges, Alaska law requires judges to release lower-risk individuals on their own recognizance. This means that the judge cannot set secured monetary bail, although the judge may set any other conditions of pretrial release.

For most charges, however, a judge retains the option to set secure monetary bail as a pretrial release condition, although there may be a statutory presumption against the use of monetary bail. In these cases, the judge needs to weigh the results of the risk tool along with other factors.

These other factors are outlined in Alaska statute:

- The nature and circumstances of the offense charged;
- The weight of the evidence against the person;
- The nature and extent of the person's family ties and relationships;
- The person's employment status and history;
- The length and character of the person's past and present residence;
- The person's record of convictions;
- The person's record of appearance at court proceedings;
- Assets available to the person to meet monetary conditions of release;
- The person's reputation, character, and mental condition;
- The effect of the offense on the victim, any threats made to the victim, and the danger that the person poses to the victim;
- Any other facts relevant to the person's appearance or the person's danger to the victim, other persons, or the community.

Can a risk assessment “get it wrong?”

Yes. Unfortunately, it is impossible to accurately predict human behavior 100% of the time. There will always be some “low risk” defendants who fail in some way during the pretrial period – though if the developed assessment is effective, the number should be small. Likewise, there will be “high risk” defendants who are released pretrial and succeed.

Ultimately, a risk assessment is just a tool to help judges make the best decisions they can make guided by the best science and evidence available.

How does a judge know when to deviate from the risk tool recommendation?

Risk assessments are meant to be coupled with professional judgement and statutory factors to determine the best release decision. When looking at the individual case before them, a judge may rightly decide an individual is or is not a good candidate for pretrial release because of x, y or z reason, regardless of what the tool says. This is referred to as an “override,” and it is expected this will happen a small percentage of the time.

Here are some examples of situations that might cause a judge to deviate from the risk tool recommendation:

- **Situations where the circumstances of the charge make this an “atypical” case.** For example, if someone is charged with murder and has no criminal history, they are likely to score low on an assessment tool. This is a known limitation of assessment tools – they can only score *known* criminal history, and this is why it is essential that professional judgement play a role in evaluating each individual case in relationship to the charged offense.
- **Situations where there is a very extensive history of a factor.** For example, an individual may have 12 previous FTAs. Depending on the other details of the situation, that person could theoretically score low on a pretrial tool, because the tools often look at a combination of factors, not simply one factor. In this situation, it may make sense for a judge to set monetary bail or other more restrictive release conditions despite the fact that the individual scores as low risk.
- **Situations where there is a very recent pattern of a lot of antisocial/criminal conduct.** A judge may consider deviating from the presumption against setting monetary bail for someone who has had a number of *recent* charges and probation violations in short succession. Criminology research is clear on this point: recent behavior is more predictive than more distant behavior.

- **Situations where there is additional information that could not be scored.** The AK-2S is a “no interview” tool. This means that there may be additional information that can only be collected through an interview or during a bail hearing that could be relevant to the pretrial decision.

One example of this is employment. An individual might score as a high risk on the pretrial assessment based on their criminal history, and yet over the past year they’ve obtained and maintained a job, established stable housing and are participating in treatment. These factors might suggest that the individual could be successfully released pretrial with appropriate pretrial supervision and other pretrial release conditions.

However, it is important to remember that on the whole, the combination of factors on the risk assessment tool are the combination that lead to the most accurate predictions of risk across all groups. This means that if a judge were to routinely use other factors to override the tool, then they are likely to be wrong more often than if they had just followed the tool’s prediction and limited the tendency to utilize overrides.

What practices are important for a state to adopt to ensure the risk assessment tool works as well as it can?

Training, careful implementation, and consistent long-term data collection are the most important aspects of making sure the AK-2S works as well as it can.

- All stakeholders should be trained on how the tool works, how to interpret the results, and on any policies relating to the assessment’s use. This allows for each stakeholder to understand what the tool does and does not tell us.
- Implementing the tool with fidelity means that it should be programmed electronically and use the same data sources that were used to create the tool.
- Data collection allows for the jurisdictions to track how well any interventions are impacting the rates of FTA and NCA and show the impact of using the tool. Data collection also allows the jurisdictions to conduct regular re-validations to ensure the tool continues to be predictive.

All of these practices are a part of the Alaska Department of Correction’s pretrial program.